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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,196	11/19/2001	John A. Hayduke	2902-3002-001	5729

7590

04/18/2003

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EXAMINER

THOMPSON, CAMIE S

ART UNIT

PAPER NUMBER

1774

DATE MAILED: 04/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/992,196

Applicant(s)

HAYDUKE, JOHN A.

Examiner

Camie S Thompson

Art Unit

1774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made..

2. Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finley, U.S.

Patent Number 6,054,207 in view of Summers et al., U.S. Patent Number 4,100,325.

Finley discloses an extruded composite comprising a thermoplastic polymer and wood fiber wherein the wood fiber can be sawdust as per instant claims 1, 6, 16, 19 and 29 (see abstract and column 2, lines 35-54). Finley also discloses the use of both condensation polymeric materials such as thermoplastic polyurethanes and vinyl polymers as per instant claims 1, 2, 4, 7, 16, 17, 20 and 29 (see column 5, lines 15-45). Although the reference does not provide any examples of the use of acrylonitrile-butadiene-styrene (ABS) as the substrate, Finley does disclose vinyl polymers that can be used as alloys of polyvinyl chloride and acrylonitrile-butadiene-styrene (ABS). Finley does not disclose amount of ABS terpolymer resin present, the amount of the polar thermosetting material such as the polyurethanes, the amount of PVC or that the capstock material is made by coextruding PVC with the substrate as per instant claims 1, 3, 8, 16 and 21. Summers teaches weather resistant products that are made by coextruding a plasticized vinyl chloride capstock with a substrate of a acrylonitrile-butadiene styrene polymer as per instant claims 1, 9-10, 16, 22-23 and 29 (see abstract). It would have been obvious to one of ordinary skill in the art to have a PVC capstock coextruded with the substrate blend in the Finley

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reference in order to retain the appearance and slow down the impact on aging of the composite (see Summers abstract).

However, the Finley reference does disclose that polymer blends improve the physical property of the composite as shown in column 6, lines 56-58. The varying amounts of the PVC, ABS terpolymer and the thermoplastic polyurethanes affect the rigidity, strength and processability of the composite. Discovery of optimum values of a result effective variable involves only routine skill in the art in re Boesch, 617 F.2d 272, 205 ISPQ 215 (CCPA). Therefore, it would have been obvious to one of ordinary skill in the art to have the ABS terpolymer resin present in an amount from 20 to 75 weight percent, the thermoplastic polyurethanes present in an amount of less than 15 weight percent and the PVC present in an amount less than 15 weight percent in order to improve the physical properties of the composite. Also, Finley discloses that the amount of wood fiber present in the composite is 20 to 40 weight percent as per instant claims 1, 5, 16, 18 and 29 (see Finley reference, summary Table, column 11). The Finley reference discloses that the moisture content of the composite is between 0.01 and 5%, preferably less than 1.5 weight % at the time of mixing as per instant claims 11, 14, 24 and 27 (see column 5, lines 1-12). Additionally, Finley discloses that the composite material may contain additional filler as per instant claims 15 and 28 (see column 2, lines 58-60). Claims 9, 12-13, 22 and 25-26 are product-by-process claims. Even though product-by-process claims are limited and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a different product of the prior art, the claim is unpatentable even though the prior art was made by a different process. See MPEP 2113.

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Any inquiry concerning this communication or earlier communication from the examiner should be directed to Camie S. Thompson whose telephone number is (703) 305-4488. The examiner can normally be reached on Monday through Friday from 7:30 am to 4:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia H. Kelly, can be reached at (703) 308-0449. The fax phone numbers for the Group are (703) 872-9310 {before finals} and (703) 872-9311 {after finals}.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.



MARIE YAMNITZKY  
PRIMARY EXAMINER

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